Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 304 of the Telecommunications Act Of 1996	)	CS Docket 97-80
	)	
	)	
Commercial Availability of Navigation Devices	)	

To: The Commission

OPPOSITION OF TANDY CORPORATION

Tandy Corporation, the parent corporation of RadioShack, by its attorneys and pursuant to Section 1.429(f)of the Commission's Rules, 47 C.F.R. § 1.429(f), hereby respectfully submits its opposition to certain petitions for reconsideration of the Commission's Order in the captioned proceeding, FCC 98-116 (rel. June 24, 1998).[1]

I. INTRODUCTION

With nearly 7,000 affiliated stores, the RadioShack Division of Tandy Corporation is one of America's leading retailers of high quality consumer electronics equipment. Tandy applauds the Commission's efforts in this proceeding to foster the retail availability of "navigation devices" to American consumers

[1] Federal Register notice of the petitions for reconsideration was published on September 8, 1998, 63 Fed. Reg. 47,495.

pursuant to Section 629 of the Telecommunications Act, 47 U.S.C. § 549.[2]

Congress enacted Section 629 to provide American consumers the important benefits that will flow from a competitive retail equipment market: lower prices, higher quality, product innovation and increased functionality. Once a competitive retail equipment market is established consumers will be able to purchase an array of navigation devices with the features and functions they want at the prices they are willing to pay. Today's often unsightly and monofunctional set-top boxes are sure to be replaced by more attractive multifunctional models. However, for American consumers to reap the many benefits Congress intended, the Commission must establish in no uncertain terms that a competitive retail market must soon become a reality.

Presently, many of the more than 65 million U.S. cable television households[3] must pay monthly fees to lease set-top boxes from their cable television provider. Consumers often are forced to lease a set-top box indefinitely because they cannot purchase competitively priced equipment from vendors unaffiliated

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[2] The most ubiquitous navigation device is the cable television set-top or converter box. Navigation devices also include "interactive equipment, and other equipment used by consumers within their premises to receive multichannel video programming and other services offered over multichannel video programming systems." Order at n.1.

[3] See http://www.ncta.com/dir_current.html (citing current cable household estimates of Neilsen Media Research and Paul Kagan Associates, Inc.).

with their cable television provider. Congress enacted Section 629 to redress this unfortunate state of affairs. See H.R. Rep. No. 104-458, at 181 (1996) ("One purpose of this section is to help ensure that consumers are not forced to purchase or lease a specific, proprietary converter box, interactive device or other equipment from the cable system or network operator.") Ignoring the legislative history and plain language of Section 629, however, the National Cable Television Association Inc. (NCTA) and the Telecommunications Industry Association (TIA) argue that the Commission should exempt analog[4] set-top boxes from Congress' retail availability mandate. See Petition for Expedited Reconsideration of NCTA at 7-16; Petition for Reconsideration of TIA at 2-5. As demonstrated below, petitioners' arguments are unfounded and the Commission must follow the plain language of the statute and cannot exempt the analog set-top box market from retail competition.

In the Order, the Commission determined that to promote a competitive retail market for set-top boxes, integrated set-top boxes -- those that contain both security and non-security functions -- may not be sold after January 1, 2005. NCTA, TIA

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[4] "Analog equipment processes analog signals - voice, video, data - wherein the signal received is a continuous waveform which is analogous to the original signal. Digital equipment processes digital signals - voice, video, data - wherein the signal received is a waveform which carries a discrete stream of binary codes of ones and zeros. Hybrid analog/digital equipment is equipment that is capable of receiving and processing analog and digital signals. Although the hybrid equipment processes the analog and digital signals independently, the processes share some common components." Order at n.43.

and Time Warner Entertainment Company, L.P. ("Time Warner"), argue that a phase-out of integrated devices is unnecessary. NCTA at 17-24; TIA at 5-7; Time Warner Petition for Reconsideration at 3-9. The Commission should reject petitioners' transparent attempt to forestall a competitive retail set-top box market.

II. SECTION 629 APPLIES TO THE ANALOG SET-TOP BOX MARKET

NCTA and TIA have failed to demonstrate why the Commission should exempt, even if it had the legal authority to exempt, the vast analog set-top box market from retail competition. Presently, only an estimated 500,000 of the more than 65 million U.S. cable households use digital equipment.[5] Many households, particularly in rural areas, will continue to use analog equipment for years to come. Yet NCTA and TIA urge the Commission to deny millions of American consumers the benefits of a competitive retail market for analog set-top boxes or other equipment capable of combining cable reception with other inputs such as Internet access.

Among other things, NCTA and TIA contend that a competitive retail analog equipment market will inhibit innovation and the introduction of digital technology. NCTA at 10; TIA 5. Basic economic considerations reveal the absurdity of petitioners' position. In practice, so long as a cable system operator has a monopoly in the provision of analog set-top boxes used with its

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[5] See http://www.ncta.com/overview98_1.html (citing Paul Kagan Associates, Inc., Cable TV Technology, Jan. 31, 1998, p. 4.).

system, it will have little incentive to introduce digital technology and thereby subject itself to competition in the provision of equipment.[6] Thus, exempting analog equipment from retail competition could discourage rather than foster innovation.

There is no statutory basis for an analog exemption. Section 629 provides, in relevant part:

> The Commission shall . . . adopt regulations to assure the commercial availability . . . of converter boxes . . . from . . . retailers . . . not affiliated with any [MVPD] . . . .

47 U.S.C. § 549(a). Neither Section 629 nor its legislative history distinguish between analog and digital devices. The Commission thus correctly determined in the Order that "Section 629 applies to all types of equipment, including analog, hybrid analog/digital and digital equipment." Order at ¶ 27. NCTA concedes, as it must, that "the statute does not explicitly distinguish among different types of set-top boxes. . . ." NCTA at 4. Yet it and TIA implore the Commission to ignore the statute's plain language. This the Commission cannot do. Only if a statute is ambiguous is an agency afforded discretion to interpret its meaning. See Chevron U.S.A. Inc. v. Natural Resources Defense Counsel, Inc., 467 U.S. 837, 842-43 (1984).

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[6] NCTA envisions a "consumer's nightmare" if the Commission does not exempt analog equipment, arguing that consumers might be overwhelmed by the task of deploying a decoder interface. NCTA at n.26. NCTA's concerns are misplaced. RadioShack customers routinely demonstrate their willingness and ability to connect cable television wires and the like.

The language of Section 629 is unambiguous; it applies to all set-top boxes.

Moreover, Section 629's legislative history does not support the broad analog exemption urged by petitioners. The 1996 Telecommunications Act Conference Committee explained that Section 629 applies to "equipment used to access services provided by" MVPDs. See H.R. Rep. No. 104-458, at 181 (1996). The Conference Committee made no distinction (explicit or implicit) between digital and analog equipment. The House Report similarly makes no such distinction. See H. Rep. No. 104-204, at 112-113 (1995).

Tacitly acknowledging that an analog exemption is not well grounded in law or public policy, NCTA resorts to delay tactics, urging the Commission to "reconsider the timetable it has adopted for separation of analog security since that timetable was premised on the OpenCable™ digital timetable." NCTA at n.37. NCTA disregards a critical fact: when Congress enacted Section 629 in early 1996, the OpenCable™ initiative did not exist (in fact it did not come into existence until September 1997); thus, Congress did not intend the Commission to delay retail availability of analog set-top boxes.

III. THE SALE OF INTEGRATED BOXES SHOULD BE PHASED OUT BY JANUARY 1, 2005 OR SOONER

In the Order, the Commission concluded "that the continued ability to provide integrated equipment is likely to interfere with the statutory mandate of commercial availability and that the offering of integrated boxes should be phased out." Order at

¶ 69. It therefore prohibited the sale or lease "of new integrated boxes placed in service as of January 1, 2005 (i.e., 7 ½ years from the release of the Order)." Order at ¶ 69. NCTA, TIA and Time Warner, however, argue that the Commission should permit cable television companies to engage in the monopoly provision of integrated devices indefinitely. These petitioners have not demonstrated why the Commission's 7 ½ year phase-out period for integrated equipment is either unreasonable or inappropriate. Indeed, Tandy believes that the Consumer Electronics Manufacturers Association (CEMA) has shown that a shorter phase-out period would better serve the public interest. See Petition for Reconsideration of CEMA at 2-11.

NCTA contends that "Congress contemplated operator provision of integrated boxes," citing a post enactment remark of Senator Conrad Burns. See NCTA at n.42 (citing letter of Senator Conrad Burns, Chairman, Senate Committee on Communications, to FCC Chairman William Kennard). The actual legislative history of Section 629, not post enactment commentary, is germane to the Commission's deliberations in this proceeding. See 2A Sutherland, Statutory Construction § 48.03 at 315 (5th ed.) (While "[i]t is established practice in American legal processes to consider relevant information concerning the historical background of enactment in making decisions about how a statute is to be construed and applied, . . [s]ubsequent legislative history can be given little weight.")(emphasis added). The legislative history of Section 629 clearly demonstrates that Congress did not intend to perpetuate a monopoly for integrated

set-top boxes. The House Commerce Committee emphasized that "the transition to competition in network navigation devices . . . is an important national goal." H. Rep. No. 104-204, at 112 (1995) (emphasis added). The Committee would not have envisioned an unqualified "transition" to competition had it intended the Commission to carve out a permanent monopoly for the provision of integrated boxes.

NCTA's claims that there is no "compelling public interest rationale" to require the separation of security and non-security features. NCTA at 20. An FCC sanctioned monopoly for integrated set-top boxes, however, would deny American consumers important benefits intended by Congress. See H. Rep. No. 104-204 at 112 (1995) (competition "has always led to innovation, lower prices and higher quality.")[7] It would also deny consumers the benefits of improved functionality that will result from competition among many manufacturers.

Petitioners' argument that continued integration is required to enhance security likewise rings hollow. TIA at 6; NCTA at 19-20; Time Warner at 5. First, it ignores the fact that the Commission's mandatory separation of security effective July 1, 2000, will necessitate a satisfactory level of security to be achieved for non-integrated equipment. Second, as system operators add telephony and data services, more security will be

[7] See also CEMA at 7 ("Assisting cable operators and other non-competitive MVPDs in delaying the advent of equipment competition plainly does not constitute an acceptable justification for the Commission's actions.").

added to headend offices. Indeed, much of today's security (pay-per-view movies, for example) currently resides in the headend office. There is little substance to petitioners' claim of the necessity for integrated security.

Finally, TIA argues that the Commission's 7 ½ year phase-out period will impede competition in the set-top box market. TIA at 6-7. It asserts that new entrants will suffer a competitive disadvantage because they may have to produce both a security module and a converter box. TIA at 6-7. However, the Commission's phase-out -- when implemented -- actually will decrease barriers to entry. If the Commission were to permit integrated equipment indefinitely, the existing major set-top box providers could foreclose a substantial portion of the set-top box market with long term contracts. A diminished set-top box market may not present the necessary economies of scale to attract multiple competitive entrants. Because "integration is an obstacle to the functioning of a fully competitive market for navigation devices," Order at ¶ 69, the Commission, if anything, should shorten its phase-out period for integrated devices.[8]

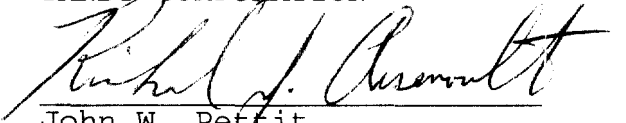
[8] The Commission should not permit MVPDs to deploy new in-stock integrated devices once the phase-out period ends. See Petition for Reconsideration of Wireless Communications Association at 5. Such an interpretation of the phase-out requirement would only encourage stockpiling of integrated equipment and prolong the introduction of retail competition to the detriment of American consumers.

IV. CONCLUSION

Tandy Corporation believes that the public interest is best served when consumers may choose whether to rent or own navigation devises or other communications equipment. The fact that the technology base may be analog is irrelevant for this well established principle. For this reason and those stated above, Tandy respectfully urges the Commission not to exempt analog set-top boxes from the retail availability mandate of Section 629. Tandy also urges the Commission to phase-out integrated set-top boxes on or before January 1, 2005.

Respectfully submitted,

TANDY CORPORATION

By: 

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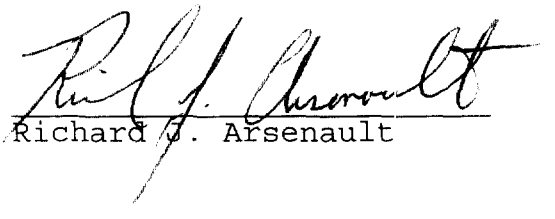

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